IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

Crl.Rev.Pet.No. 4049 of 2007()

CRA.574/2006 of ADDL. SESSIONS COURT (ADHOC)-II, ALAPPUZHA
CC.280/2004 of JUDL.MAGISTRATE OF FIRST CLASS-II(MOBILE), ALAPPUZHA

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REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED

JOGGY JOSEPH, SON OF JOSEPH,
AGED 54, PROPRIETOR, CHERUKARA GAS AGENCIES,
CHERUKARA HOUSE, SUBRAMONYAPURAM,
AVALOOKUNNU, P.O.ALAPPUZHA.

BY ADV. SRIR.AZAD BABU

RESPONDENTS: COMPLAINANT

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1. K.J.JOHN, S/O.JOSEPH,
KUNNEL VEEDU, PATHIRAPPALLY P.O.,
ALAPPUZHA.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 13/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 4049 OF 2007

Dated this the 13th day of November, 2007

O R D E R

In this revision filed under Section 397 read with Section 401 Cr.P.C. the petitioner who was the accused in C.C. No.280/2004 on the file of the J.F.C.M.-II, Alappuzha challenges the conviction entered and the sentence passed against him for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the revision petitioner re-iterated the contentions in support of the revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the revision petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded

on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the revision petitioner. I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C. Accordingly, the sentence imposed by the courts below on the revision petitioner is set aside and instead he is sentenced to pay a fine of Rs.70,000/- (Rupees seventy thousand only) within four months from today, failing which he shall suffer simple imprisonment for three months by way of default sentence. As and when the fine amount is deposited, the same shall be paid to the 1st respondent complainant by way of compensation under Section 357(1) Cr.P.C.

This revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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